IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 262 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BIN RAJYA PATRIK VAN KARMACHARI MANDAL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 262 of 1989

MR MB GANDHI for Petitioner No. 1

MR UDAY BHATT, AGP for Respondent No. 1

RULE SERVED for Respondent No. 2

MR MJ PARIKH for Respondent No. 3

MR SM MAZGAONKAR for MR SN SHELAT for Respondent No. 4

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 06/02/2003

ORAL JUDGEMENT

#. The petitioner-Union of the Non-Gazetted Forest Employees challenges the amendment in the Rangers (Subordinate Forest Service) Recruitment Rules, 1969, by the Amendment Rules at Annexure : D, framed on 29th January, 1982, by which Rule 6(1) was substituted by providing that a Forester who has passed First year B.Sc. or an equivalent examination and who has stood first in the examination of the Foresters Training Class, shall be eligible to compete in the test for selection of Rangers. Prior to this Amendment, Rule 6(1) provided that a Forester who has passed Secondary School Certificate Examination or its equivalent examination with English as one of the subjects and who has stood first in the examination of the Foresters Training Class, shall be eligible to compete in the test for selection of Rangers' Course. In short, the amendment which raises educational qualification from Secondary School Certificate Examination or equivalent examination to the First year B.Sc. or equivalent examination, is sought to be challenged by the petitioner. It is stated that some of the members of the petitioner Union are Foresters while others are Forestry Extension Assistants for whom a separate set of rules was framed on 12th October, 1976, as per Annexure:A to the petition. The petitioner sought an order for restraining the Respondent No. 3 G.P.S.C. from proceeding with the recruitment to the post of Rangers pursuant to advertisement at Annexure:E to the petition. Interim relief was refused on 28.2.89 when Rule was issued on the petition, but it was ordered that any further promotion from the post of Foresters to the post of Rangers would be subject to the result of the petition.

#. The learned counsel appearing for the petitioner contended that the amended rule to the extent that it raises educational qualification for eligibility to the post First year B.Sc. or equivalent from the earlier qualification of Secondary School Certificate Examination or equivalent which was prescribed in Rule 6(1) of the Rangers' Rules was discriminatory inasmuch as it had the effect of disqualifying the members of the petitioner Union who under the unamended under Rule 6(1) were qualified to be considered for the post of Rangers. By changing the eligibility criterion in the Rangers Recruitment Rules, the rule framing authority acted arbitrarily and in the manner which would cause discrimination against the members of the petitioner Union, who had a right to be considered for the said higher post on the basis of their educational qualification of Secondary School Certificate Examination. It was also argued that the classification

made by such amendment had no nexus with the object which was sought to be achieved and that it was made on irrational basis. It was submitted that the Forestry Extension Assistants were not made eligible for being considered for the said post of Rangers though as can be seen from their Recruitment Rules, they possessed the same qualification as the Foresters and their service conditions were almost identical to those of the Foresters. It was submitted that though a proposal was mooted for amalgamating the posts of Foresters and Forestry Extension Assistants, the Government had slept over it for more than a decade. If the posts were amalgamated, even the Forestry Extension Assistants would have become eligible for being considered for the post of Rangers. The learned counsel placed reliance on the decision of the Supreme Court in Raghunath Prasad Singh Vs. Home Department, Government of Bihar, reported in AIR 1988 S.C. 1033, in which the Supreme Court held that reasonable promotional opportunity should be available in every wing of public service. That generates efficiency in service and fosters the appropriate attitude to grow for achieving excellence in service. In the absence of promotional prospects, service is bound to degenerate and stagnation kills the desire to serve properly.

#. Low Subordinate Foresters Service Recruitment Rules framed on 14th August, 1969 under Article 309 of the Constitution, provided two methods of appointment to the post of Rangers i.e. by promotion of a person of proved merit and efficiency from amongst the Foresters or by direct selection under Rule 2 of the said Rules. Rule 3 provided eligibility criteria for direct recruits, while Rule 4 prescribed ratio of 2:1 for appointment by direct selection and by promotion. Rule 6 provided eligibility criteria for those who were already in service in the posts of Foresters, Guards and Surveyors to enable them to compete in the post for direct selection of Rangers. Earlier Rule provided eligibility criteria of Secondary School Certification Examination or equivalent examination for Foresters for being able to compete in the post for selection of the Rangers' Course. On such completion of training course from Rangers College, the candidate was to be appointed as Ranger if he passed the Lower Standard Certificate. Merely on the basis of a person's entering the cadre of Foresters prior to the amendment in Rule 6(1) of the Rangers Rules, they did not acquire any right to be considered for the promotional post on the basis of the Rules applicable to the post at that time. An entry in the lower post does not confer any right on the incumbent to claim promotion to the higher post, on the basis of the Rules governing that

post at the time of his entry in the subordinate post. He has a right to be considered for promotion as and when his turn arises only as per the Rules governing promotional post at the time of his being considered for an appointment to that post. The only right that an incumbent has is to be considered for promotion and there is no right to restrict the power to change the Recruitment Rules for the higher post which can be exercised under Article 309 of the Constitution. No such fetter can be imposed on the power to amend the Recruitment Rules for the promotional post. The incumbent who falls within the zone of consideration would, at best have a right to be considered as per the then Recruitment Rules and not the earlier Rules for the promotional post. There is, therefore, no substance in the contention that the amended higher educational qualification required by way of eligibility of Foresters for appearing at the test for selection of Rangers' Course was discriminatory or violative of any fundamental right of the members of the petitioner Union. It was open for the authority exercising power under Article 309 to raise the level of educational qualification for the post of the Rangers and the amended Rule would obviously apply from the date it came into force. Therefore, if the members of the petitioner Union did not satisfy the educational qualification laid down by the amended provision, they cannot make any grievance against it or claim any right for being allowed to compete in the test for selection of the Rangers' Course notwithstanding the fact that they were not eligible to so compete.

#. Raising of educational qualification from Secondary School Certificate Examination to the First year B.Sc. or equivalent cannot be termed to be irrational. It would be seen that for direct selection under Rule 3(b), minimum educational qualification prescribed was intermediate examination of any recognized University or its equivalent examination in one or more of the Science subjects which included Botany or Geology, or H.S.C. examination or pre-university examination followed by a pre-professional or pro-technological Course with one of the Science subjects such as Botany and Geology. If the Competent Authority keeping in view the functions to be discharged by Foresters, Forest Guards, Forest Surveyors and Rangers, has laid down the qualification of First year B.Sc. for being considered for selection to Rangers' Course, it cannot be said that it acted on any irrational basis. It would not be for the Court to prescribe qualifications for eligibility to such posts. The impugned amendment cannot, therefore, be assailed on any valid ground.

#. Since the members of the petitioner Union were not qualified for being considered for the Ranger's post, the decision of the Supreme Court in Raghunath cannot confer any right on them for being promoted to the higher post notwithstanding their being ineligible. Even the question of amalgamation of two cadres of Foresters and Forestry Extension Assistants falls within the domain of the State Government and it would essentially be a matter of policy to amalgamate the posts with which the Court would not be concerned. We therefore need not go behind the reasons for which the posts were not amalgamated. The fact remains that the Forestry Extension Assistants were not eligible under the Recruitment Rules of Rangers to compete for the Rangers' Course and the matter should rest at that.

#. In the above view of the matter, the petitioner has failed to make out any case for being granted any of the reliefs prayed for in this petition. The petition is, therefore, rejected. Rule is discharged with no order as to costs. Interim order stands vacated.

[R.K. ABICHANDANI, J.]
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